

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Feng (nmi) Cao et al.
Serial No.: 10/766,245
Filing Date: January 26, 2004
Group Art Unit: 2614
Confirmation No.: 4163
Examiner: Amal S. Zenati
Title: SYSTEM AND METHOD FOR DISTRIBUTED IP
TELEPHONY TRACKING

Honorable Commissioner
for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

Section 102 Rejections

The Final Office Action issued July 30, 2008 (the “Final Office Action”) and the Advisory Action issued November 6, 2008 (the “Advisory Action”) reject Claims 1-28 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,922,786 issued to Ong (“Ong”). As Applicants previously noted in a Response to Final Office Action filed April 30, 2008 (the “April 30 Response”) and as explained further below, these rejections are legally and/or factually deficient.

Rejection of independent Claims 1, 9, 17, and 27 under 35 U.S.C. § 102 over Ong

As Applicants previously noted (*see, e.g.*, April 30 Response, pp. 13-15), *Ong* fails to recite, expressly or inherently, every element of Claim 1. Applicants respectfully note that, for a rejection under 35 U.S.C. § 102 to be proper, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim,” and “[t]he elements must be arranged as required by the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131 (emphasis added). *Ong* does not disclose the subject matter of Claim 1 arranged as claimed by Claim 1 and in as much detail as recited by Claim 1. For example, *Ong* fails to disclose “transmitting a notification message to a remote node, wherein the notification message identifies the call identifier and the filter status of the call.”

In addressing this element of Claim 1, the Examiner has cited to a changing collection of different passages from *Ong* that allegedly disclose this element. In the first Office Action, issued in this case on December 30, 2007 (the “December 30 Office Action”), the Examiner cited to a portion of *Ong* (*Ong*, col. 3, ll. 48-51, emphasis added) that indicates only that “[t]he real-time firewall 150 receives real-time packets from the source network and forwards packets that are accepted according to some filtering characteristics described in the corresponding control protocol.” *See* December 30 Office Action, p. 3. In that case, the Examiner was presumably attempting to equate the forwarded packets described by the cited portion with the claimed “notification message” of Claim 1. As Applicants noted in the April 30 Response, *Ong* does not indicate that the forwarded packets “identif[y] [a] call identifier and the filter status of [a] call.” April 30 Response, p. 13. Thus, *Ong* fails to disclose “transmitting a notification message to a remote node, wherein the notification

message identifies the call identifier and the filter status of the call” (emphasis added) as recited by Claim 1.

In the Advisory Action, the Examiner now cites to a portion of *Ong* indicating that “the call server downloads the filtering information, including a filtering characteristic, and/or modifying action to the real-time firewall using a control protocol.” *Ong*, col. 5, ll. 10-23, emphasis added. According to the Examiner, “downloading using a control protocol read [sic] on transmitting a notification message.” Advisory Action, p. 2, § 2, ¶ 2. The Examiner fails to explain how the downloaded filtering characteristics “identif[y] the call identifier and the filter status of the call.” Indeed, the “downloading” described by the now-cited portion of *Ong* happens before firewall 150 even begins receiving the packets the Examiner equates with the call. See, e.g., *Ong*, col. 5, ll. 14-19. (“Next, the call server downloads the filtering information, including a filtering characteristic The call server then authorizes the end system to begin sending real-time packets for the call (Block 325).”) Moreover, the newly-cited portion of *Ong* still fails to disclose “transmitting a notification message to a remote node, wherein the notification message identifies the call identifier and the filter status of the call” (emphasis added) as recited by Claim 1.

As a result, *Ong* fails to disclose the subject matter of Claim 1, in as much detail and as arranged by Claim 1 for at least this reason. The rejection of Claim 1 thus includes clear legal and/or factual deficiencies. Although Claims 9, 17, and 27 differ in scope from Claim 1, the rejections of Claims 9, 17, and 27 are deficient at least for analogous reasons. Applicants respectfully request reconsideration and allowance of Claims 1, 9, 17, and 27, and their respective dependents.

Rejection of independent Claims 7, 15, 24, and 28 under 35 U.S.C. § 102 over *Ong*

As Applicants previously noted, *Ong* fails to recite, expressly or inherently, every element of Claim 7. For example, *Ong* fails to disclose “receiving a request message from a remote node, wherein the request message includes a call identifier; [and] . . . transmitting an acknowledgement message to the remote node, wherein the acknowledgement message identifies the filter status.” In addressing these elements of Claim 7, the Final Office Action attempts to equate the claimed “request message” with a “request (REQ) message” disclosed

by *Ong* and the claimed “acknowledgement message” with a “decision (DEC) message” disclosed by *Ong*. Final Office Action, p. 4.

As the Final Office Action essentially conceded, *Ong* does not explicitly indicate that the REQ message includes a call identifier. *See, e.g.*, Final Office Action, p. 7. To remedy this deficiency, the Final Office Action originally relied on an inherency argument, alleging that a “call identifier” is inherent in the REQ message disclosed by *Ong*. *Id.*, emphasis added. (“The (REQ) message cannot request filtering information that [is] associated with the call without providing the call identifier; therefore, it is inherent that the (REQ) message includes the call identifier in order to request filtering status associated with the call.”) As Applicant previously noted, this inherency rejection is improper. *See* April 30 Response, pp. 15-16.

In the Advisory Action, however, the Examiner notes that “[t]he Examiner here points out clearly that the rejection for ‘wherein the request message (REQ) includes a call identifier’ does not rely on inherency.” Advisory Action, p. 2. Instead, the Examiner now bases the present rejection on the fact that allegedly “[t]he objects carried in the COPS message may include Policy Rule Identifier (PRID) objects. The PRID objects reference one or more specific filtering rules (e.g., traffic bandwidth, IP address or port number corresponding to the call).” Advisory Action, p. 2. This new mapping, however, ignores the fact that the Examiner has already mapped specific elements of Claim 7 to certain elements of *Ong*. For example, the Final Office Action appeared to map the filtering rules of *Ong* to the “filter status” recited by Claim 7. *See, e.g.*, Final Office Action, p. 7. If the REQ message’s “filtering rules” are now “a call identifier” then *Ong* fails to disclose “determining a filter status associated with the call identifier” (emphasis added) as *Ong* fails to disclose “determining a filter status associated with the [filtering rules].” More generally, the rejection fails to identify both a “call identifier” and a “filter status” in *Ong*, instead conflating the two into a single element.

As a result, even under the Examiner’s new interpretation, *Ong* fails to disclose the subject matter of Claim 7, in as much detail and as arranged by Claim 7 for at least this reason. The rejection of Claim 1 thus includes clear legal and/or factual deficiencies. Although Claims 15, 24, and 28 differ in scope from Claim 7, the rejections of Claims 15, 24,

and 28 are deficient at least for analogous reasons. Applicants respectfully request reconsideration and allowance of Claims 7, 15, 24, and 28, and their respective dependents.

Conclusions

As the rejections of Claims 1-28 contain clear deficiencies, Applicants respectfully request full allowance of Claims 1-28. To the extent necessary, the Commissioner is hereby authorized to charge any required fees or to credit any overpayments to Deposit Account No. 02-384 of Baker Botts L.L.P.

Respectfully submitted,

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